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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,922	12/19/2001	Naoto Yasaka	1155-0236P	8872

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EXAMINER
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AUGHENBAUGH, WALTER

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 12/01/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

CLO 15

**Office Action Summary**

Application No.

10/020,922

Applicant(s)

YASAKA ET AL.

Examiner

Walter B Aughenbaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2003 and 22 September 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-8 and 10-20 is/are rejected.
- 7) ☒ Claim(s) 2 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All   b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Acknowledgement of Applicant's Amendments***

1. Applicant's replacement abstract provided in the Amendment filed July 28, 2003 (Paper 13) has been received and considered by Examiner.
2. Applicant's amendments to the specification in Paper 13 have been received and considered by Examiner.
3. Applicant's amendments to claims 1-8 in Paper 13 have been received and considered by Examiner.
4. New claims 9-20 presented in Paper 13 have been received and considered by Examiner.
5. Applicant's amendments to claims 4, 6-8 and 10-20 in the Supplemental Amendment filed September 22, 2003 (Paper 14) have been received and considered by Examiner.

### ***WITHDRAWN OBJECTIONS***

6. The objection to the abstract made of record in paragraph 1 of Paper 11 has been withdrawn due to Applicant's amendments in Paper 13.

### ***REPEATED OBJECTIONS***

7. The objection to the specification made of record in paragraph 2 of Paper 11 has been repeated for the reasons previously made of record in paragraph 2 of Paper 11 along with the clarification made in the interview of April 21, 2003 made of record in the Interview Summary (Paper 12). As stated in the interview of April 21, 2003 and as made of record in the Interview Summary (Paper 12), "the phrase provided on lines 2-4 of page 7 of the specification" is the portion of the specification under objection, yet Applicant did not amend lines 2-3 of page 7 of the specification, the portion of the specification that contains the bulk of the language under

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objection; the structure intended to recited by the phrase “comprising a cover of a laminate and a cup of a resin layer of polypropylene (II)” on lines 2-4 of page 7 of the specification is not at all clear. What is the structure that is recited by “a cover of a laminate”? What is the structure that is recited by “a cup of a resin layer”? The language of the phrases “a cover of a laminate” and “a cup of a resin layer” is so contrary to standard English that the structure intended to be recited by this phrase cannot be definitely ascertained.

8. The objection to claim 2 made of record in paragraph 3 of Paper 11 has been repeated for the reasons previously made of record in paragraph 3 of Paper 11. As written in paragraph 3 of Paper 11, “Claim 1, upon which claim 2 depends, does not require the inclusion of ethylene/ $\alpha$ -olefin copolymer (B) in the composition”. For withdrawal of the objection of claim 2, claim 1 clearly should have been amended so that claim 1 requires the ethylene/ $\alpha$ -olefin copolymer (B). Claim 1 as originally filed did not require the ethylene/ $\alpha$ -olefin copolymer (B), for one reason, because of the “and/or” term in the fifteenth line of the claim as written on page 31 of the application.

#### ***WITHDRAWN REJECTIONS***

9. The 35 U.S.C. 112, first paragraph rejection of claim 5 made of record in paragraph 5 of Paper 11 has been withdrawn due to Examiner’s reconsideration; Applicant is entitled to be his/her own lexicographer. The sealant layer (I) would “seal” the interior of the sealed package from air to some degree.

10. The 35 U.S.C. 112, second paragraph rejection of claims 1 and 3 made of record in paragraph 7 of Paper 11 has been withdrawn due to Applicant’s amendments in Paper 11.

***REPEATED REJECTIONS***

***Claim Rejections - 35 USC § 112***

11. The 35 U.S.C. 112, first paragraph rejection of claim 8 made of record in paragraph 5 of Paper 11 has been repeated for all the reasons previously made of record in paragraph 5 of Paper 11. Applicant asserts that “a three-layered cup” is described on page 20 of the specification in page 17 of Paper 13, but this is not the case, although a “multilayer” “cup” is discussed.

Examiner acknowledges the discussion of the cover on page 20 of the specification cited by Applicant and the Figure provided by Applicant on page 17 of Paper 13, but the content of page 17 of Paper 13 does nothing to address the rejection of claim 8 under 35 U.S.C. 112, first paragraph; the figure provided in Paper 13 or any discussion that would lead one to the structure depicted by this figure is certainly not provided in the specification. 35 U.S.C. 112, first paragraph requires that the specification contain a “full, clear, concise” written description of the invention; this is not the case in regard to claim 8, and Applicant certainly has not shown this not to be the case in the arguments presented in pages 16-19 of Paper 13. Note that the phrase “a three-way sealing of the sealant laminate” at lines 12-13 of page 20 of the specification that is cited by Applicant describes nothing about the structure of the laminate; e.g. this phrase does not read on a three-layer laminate. Applicant has not addressed the issues of “the specification lacks a clear description as to how the cover is joined to the cup to form a hermetic seal” and the “inconsistency” in the description of the structure of the cup as discussed in paragraph 5 of Paper 11.

12. The 35 U.S.C. 112, second paragraph rejection of claims 4-8 made of record in paragraph 7 of Paper 11 has been repeated. Applicant argues that the definition of “hermetically” is “so as

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to be airtight”, but the claims are rejected under the basis that “hermetically” is a relative term; the term “airtight” itself is a relative term. Relative terms such as “hermetically” must be defined in the specification for a clear delineation of the scope of the degree of air permeation resistance sought for patent protection. The bases of rejection on page 5 of Paper 13 and in the paragraph bridging pages 5 and 6 of Paper 13 have been repeated since those issues were not addressed by Applicant. The basis of rejection with regard to the term “easily openable” and the phrases “base layer of a member” and “selected from among” have been withdrawn due to Applicant’s amendments in Paper 13.

***Claim Rejections - 35 USC § 102***

13. The 35 U.S.C. 102(b) rejection of claims 1, 3, 4 and 7 made of record in paragraph 9 of Paper 11 has been repeated for the reasons previously made of record in paragraph 9 of Paper 11. Claim 1 as amended does not require that the ethylene/ $\alpha$ -olefin copolymer (B) be a component of the composition due to the recitation “the ethylene/ $\alpha$ -olefin copolymer (B) is contained in an amount of less than 50% by weight and [(B), (C)] or said ethylene/ $\alpha$ -olefin copolymer (B) and said linear low density polyethylene (C) are contained in a total amount of 15 to 90% by weight”; this language reads on the embodiment where the amount of ethylene/ $\alpha$ -olefin copolymer (B) is 0. In Paper 14, the language reciting the composition of claim 1 was inserted as an alternative to the recitation “polypropylene as claimed in claim 1” in claim 4 (lines 3-4 of claim 4); therefore the rejection of claim 4 (independent claim 4 as of the amendment in Paper 14) previously made of record in Paper 11 is repeated.

***Claim Rejections - 35 USC § 103***

14. The 35 U.S.C. 103(a) rejection of claims 5 and 6 made of record in paragraph 11 of Paper 11 has been repeated for the reasons previously made of record in paragraph 11 of Paper 11 and for the reasons discussed above in regard to the rejection of claims 1 and 4.

15. The 35 U.S.C. 103(a) rejection of claim 8 made of record in paragraph 12 of Paper 11 has been repeated for the reasons previously made of record in paragraph 12 of Paper 11, for the reasons discussed above in regard to the rejection of claims 1 and 4 and for the following reasons that address the amendments where necessary to claim 8 in Paper 13 and Paper 14: the recitation “by laminating” (eleventh line of claim 8 as written in Paper 14) has not been given patentable weight since the method of forming the laminate is not germane to the issue of patentability of the laminate itself. Also note that laminates are necessarily formed “by laminating”.

***NEW OBJECTIONS***

***Specification***

16. The amendment filed July 28, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the replacement of “the easily openability” with --easy accessibility--. The terms “openability” and “accessibility” are separate terms where neither term is suggestive of the other. Furthermore, it is not clear exactly what is “accessib[le]”.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Objections***

17. Claim 9 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 9 fails to further limit the subject matter of a previous claim because the “both... polyethylene (C)” limitation of claim 9 is recited in claim 1, upon which claim 9 depends. The “both... polyethylene (C)” limitation is recited in claim 1 at the fourth indentation of the claim after the preamble of the claim.

***NEW REJECTIONS***

***Claim Rejections - 35 USC § 112***

18. Claims 12, 17 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The bases of rejection of claim 8 under 35 U.S.C. 112 repeated in this Office Action applies to new claims 12, 17 and 20.

19. Claims 10-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 10 and 18, the structure intended to be recited by the phrase “a cover of a laminate” cannot be ascertained. If the layers I, II and III form the laminate as recited in claim 5, how is it that the layer II is in the form of a cup while the layers I and III form a “cover



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of a laminate” as is recited in claims 10 and 18 (the layers I, II and III comprise a single laminate, so the layers I, II, and III must form one structure, either a cup, or a “cover of a laminate”; the layers cannot form different structures as the structure is claimed in claim 5).

Claims 10 and 18 recite the limitation "the cup" in the third line of the claims. There is insufficient antecedent basis for this limitation in the claim.

The term "hermetically" in claims 10-20 is a relative term which renders the claim indefinite. The term "hermetically" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

In regard to claims 10-20, the claim should positively set forth the purpose of the package and the structure necessary for carrying out the purpose, i.e., the claim is incomplete in regard to the structure of the package. The structure as to how the package is hermetically sealed is not recited; therefore, the term “hermetically sealed” renders claims 10-20 indefinite.

The bases of rejection of claim 8 under 35 U.S.C. 112 repeated in this Office Action applies to new claims 12, 17 and 20.

The language of claim 17 in the first three lines of page 17 of Paper 14 needs to be straightened out.

***Claim Rejections - 35 USC § 103***

20. Claims 10, 11, 13-16, 18, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al.

Yamamoto et al. teach the package as discussed above and in paragraph 11 of Paper 11.

In regard to claims 10 and 18, the sealant layer (I) and the base layer (III) necessarily form a cover of a laminate as claimed in claims 10 and 18; claim 5 recites that the sealant layer (I) and the base layer (III) "overla[y]" the resin layer of polypropylene (II) of the laminate, and therefore, the sealant layer (I) and the base layer (III) form a cover of a laminate. The phrase "the cup" in claims 10 and 18 lacks antecedent basis. In regard to claims 11 and 19, Yamamoto et al. teach that the sealant layer has a thickness of 30 $\mu$ m and that a nylon (polyamide) base layer has a thickness of 15 $\mu$ m (col. 12, lines 54-61). In regard to claim 13, Yamamoto et al. teach the package claimed in claim 4 as discussed above and in Paper 11 (the package claimed in claim 13 is the package claimed in claim 4). In regard to claim 14, Yamamoto et al. teach the package claimed in claim 5 as discussed above and in Paper 11 (the package claimed in claim 14 is the package claimed in claim 5). In regard to claim 15, Yamamoto et al. teach the package claimed in claim 6 as discussed above and in Paper 11 (the package claimed in claim 15 is the package claimed in claim 6). In regard to claim 16, Yamamoto et al. teach the package claimed in claim 7 as discussed above and in Paper 11 (the package claimed in claim 16 is the package claimed in claim 7).

21. Claims 12, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. and in further view of Yamada et al.

In regard to claim 12, Yamamoto et al. and Yamada et al. teach the package claimed in claim 8 as discussed above and in Paper 11 (the package claimed in claim 12 is the package claimed in claim 8). In regard to claim 17, Yamamoto et al. and Yamada et al. teach the package claimed in claim 8 as discussed above and in Paper 11 (the package claimed in claim 17 is the package claimed in claim 8). In regard to claim 20, Yamamoto et al. and Yamada et al. teach the

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package claimed in claim 8 as discussed above and in Paper 11 (the package claimed in claim 20 is the package claimed in claim 8).

### ***ANSWERS TO APPLICANT'S ARGUMENTS***

22. Applicant requests clarification of the status of claim 2 on page 21 of Paper 13; Examiner has not considered patentability of claim 2 due to the improper dependent form of claim 2. As discussed in Paper 11 and above in this Office Action, component “(B)”, which is the sole subject of claim 2, is not a required component of claim 1, the claim upon which claim 2 depends.

23. Applicant's arguments on pages 24-25 of Paper 13 regarding the 35 U.S.C. 102(b) rejection of claims 1, 3, 4 and 7 as anticipated by Yamamoto et al. and the 35 U.S.C. 103(a) rejection of claims 5 and 6 over Yamamoto et al. have been fully considered but they are not persuasive. Applicant argues that Yamamoto et al. “is completely silent with respect to controlling the sealing strength depending on the kind of base material”, but nothing in regard to the sealing strength is claimed. Applicant argues that “polypropylene is not used as base material in the Examples of [presumably, Yamamoto et al.]”, but the material of the base layer is never limited to solely polypropylene; as stated in paragraph 11 of Paper 11, Yamamoto et al. plainly teach that “the base layers are selected from polyesters, polyamides, aluminum foil or polyolefins such as polypropylene (col. 8, line 54-col. 9, line 4)”. Applicant asserts that the amendment to “less than 50% by weight” “clearly distinguishes the present invention and Yamamoto by removing the case where the content of (B) is 50%; this assertion is most false since the rejection as it stands does not address the (B) component since it is not required by claim 1 as currently written as discussed above in this Office Action. Yamamoto et al. teach the

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(A) and (C) components as made of record in Paper 11 and teach the invention claimed in claim 1 since (B) is not required by claim 1.

24. Applicant's arguments on pages 20-23 of Paper 14 regarding the 35 U.S.C. 102(b) rejection of claims 1, 3, 4 and 7 as anticipated by Yamamoto et al. and the 35 U.S.C. 103(a) rejection of claims 5 and 6 over Yamamoto et al. have been fully considered but they are not persuasive. Applicant again argues in regard to the (B) component, but any argument as to what Yamamoto et al. does or does not teach in regard to the (B) component is irrelevant because Yamamoto et al. teach the (A) and (C) components as made of record in Paper 11 and teach the invention claimed in claim 1 since (B) is not required by claim 1. Applicant further regurgitates the arguments made in regard to the "control of the sealing strength" and the base material that are addressed above in the response to Applicant's arguments presented in Paper 13. Applicant argues that Yamamoto et al. "is deficient in disclosing an easily openable hermetically sealed package"; contrary to Applicant's arguments, Yamamoto et al. teach a hermetically sealed package as discussed in paragraph 12 of Paper 11, and note the 35 U.S.C. 112, second paragraph issues in regard to the term "hermetically" that have not been resolved by Applicant. Furthermore, the "easily openable" phrase is no longer at issue.

Applicant asserts "the present invention unexpectedly achieves better sealing properties", but Applicant has not provided proof of unexpected results in the form of a comparison between the instant application and the closest prior art (i.e. Yamamoto et al.).

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**Conclusion**

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

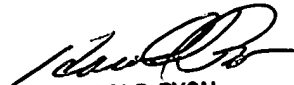
26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 703-305-4511. The examiner can normally be reached on Monday-Thursday from 9:00am to 6:00pm and on alternate Fridays from 9:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 703-308-4251. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

wba  
11/19/03

*WBA*

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
*1772*

*11/29/03*